IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 653 OF 1996

Dilip Kisan Savant..... .....Appellants.
(Orig.Accd.)

V/s

The State of Maharashtra .... Respondents.

None for the appellant.

Mr.B.H. Mehta, APP for the State.

CORAM: V.G. PALSHIKAR
AND
V.C. DAGA, JJ.

8th June, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the order of the conviction and sentence passed by the Additional Sessions Judge, Pune in Sessions Case No.498/93 against the appellant-accused the appellant has preferred this appeal on the grounds mentioned in the memo of appeal and as verbally canvassed before us.

2. With the assistance of the learned Public Prosecutor we have reappreciated the entire evidence on record.

3. The prosecution story as it emerges on reappreciation of evidence stated briefly is that the accused and the victim had cordial relations and were often seen together. According to the prosecution on or about 15.7.1993 around

7.00 p.m. the accused committed murder of the victim Muralilal Jivram Sharma. A complaint to that effect was lodged, investigation was conducted, police statements were recorded, recoveries were made and on the basis of that Sessions Case No.498/93 was registered on the file of Additional Sessions Judge, Pune. The prosecution examined as many as 11 witnesses to prove its case that the accused was responsible for homicidal death of the victim Muralilal. He intended to cause death and therefore homicidal amounted to murder. The learned trial Judge on appreciation of that evidence on record came to the conclusion of guilt and in consistent with the same sentenced the accused to suffer imprisonment for life. It is this judgment of conviction and sentence passed on 30.10.1996 that the present appeal is preferred by the appellant.

4. At the time when the appeal was called none appeared for the appellant. The appeal is of the year 1996 and the incident is of the year 1993. The appellant-accused is on bail since then. None appeared for the accused at the time of hearing probably because the accused is on bail and therefore is negligent about conducting of his case. His Advocate also is not present. Taking into consideration the fact that the accused is on bail for all these years and is convicted under section 302 of Indian Penal Code we with the assistance of the learned Public Prosecutor have scrutinized the record and evidence, reappreciated the same and our conclusions from such reappreciation would decide the present appeal.

5. P.W.1-Anant Potphode is the Police Patil of the village where the accused and the victim resided. At the time of incident he heard about the

quarrel between the accused and the victim and therefore went to the house of the accused which was locked. He therefore peeped in through the window and noticed dead body with blood around. He therefore called the police and police came on the spot, accused also came on the spot, the door was open after breaking open the lock. The witness has deposed that he heard the accused saying that he had killed Muralilal.

6. P.W.2-Ashok Bhoir was panch to the seizure of clothes of the accused which were blood stained. However this witness has turned hostile and therefore cannot be relied upon for the proof of panchnama which discloses seizure of clothes of the accused. P.W.3-Gopinath Bhoir is panch witness to the spot panchnama. He has proved the same as Ex.16. This spot panchnama mentions blood stained pickaxe lying on the spot which was used for the assault on the victim Muralilal.

7. P.W.4-Ramdas Laigude is the person who in the afternoon on that day saw the accused and the victim together consuming liquor and he has deposed to that effect. He therefore is one of the witnesses who saw the accused and the victim together in the afternoon of the day on which the crime was committed. P.W.5-Gabalu Sawant is another villager who was told about the quarrel between the accused and the victim by the wife of the accused. Then he saw the victim and when he heard about the incident called the Police Patil to inquire into the matter. P.W.6-Namdeo Potphode is a panch to the seizure of clothes of the accused. He also has turned hostile.

8. P.W.7-Bandu Vinode is another panch who has turned hostile. He was

supposed to be witness to the recovery of the spade and pickaxe vide Ex.21 found from near the place of incident. P.W.8 is Doctor Usha Baliga who has conducted post mortem and has deposed that there were 22 ante mortem injuries on the body of the victim and has stated that the death was homicidal caused by the injuries sustained by the victim before death. She thus proves homicidal death of the victim. P.W.9-Barku Sawant at the relevant time was sarpanch of the village where the incident occurred who was told about quarrel by P.W.5-Gabalu and therefore he went to the spot where he found both police patil and Gablu. He has narrated how he saw the incident and he substantially corroborates both Police Patil and Gablu on material particulars regarding discovery of corpse in the injured condition from the house of the accused. P.W.10-Maruti Shinde is another panch who was present at the time when recovery of spade and pickaxe was made at the instance of the accused. He has proved the panchnama. He and the investigating officer thus prove recovery of spade and the pickaxe from the site pointed out by the accused which allegedly was used. P.W.11-Hindurao Godse is the Assistant Police Inspector who was the investigating officer. It is on the basis of this evidence that the learned trial Judge found the accused-appellant guilty and proceeded to convict him as aforesaid. The grounds mentioned in the Memorandum of Appeal for questioning the correctness of the order of conviction are that (1) as to how the death was caused; (2) there is no direct evidence in the shape of eye witnesses to prove that the assault was committed by the accused only; (3) that there was no adequate motive for the committing of assault as alleged by the

prosecution. We have to consider these contentions or questions in the light of the evidence as appreciated by us again as mentioned above.

9. The prosecution has succeeded in proving that the accused and the deceased were seen last together by P.W.4-Ramdas and P.W.5-Gabalu, that there was quarrel between the accused and the victim and that both quarreled after having consumed liquor as deposed to by P.W.4-Ramdas. This has occurred in the afternoon and around 7.00 p.m. The body of the victim was recovered from the place of abode of the accused. The place was locked and the accused was not there. The fact that there was quarrel between the accused and the victim is further corroborated by P.W.-Barku who was sarpanch and who was told about it by P.W.5-Gabalu. He went to the spot and has corroborated the deposition of P.W.1-Anant, police patil and P.W.5-Gabalu. P.W.10-Maruti and P.W.11-Hindurao together establish the recovery of spade and pickaxe vide Ex.21 which was recovered at the instance of the accused as according to the accused he had kept it there. Rest of the part of his statement being inadmissible need not be considered.

10. The homicidal death of the victim is proved beyond doubt by P.W.8 Dr.Usha who conducted the post mortem and has deposed to 22 injuries inflicted on the body of the victim and has stated that those injuries were ante mortem and were sufficient to cause death.

11. Totality of this evidence proves the following circumstances:

i) that there was quarrel between the accused and the victim;

ii) in the afternoon of the date of incident i.e. 7.6.1993 they were

together

consuming liquor;

iii) that thereafter there was quarrel between the two;

iv) body of the victim was recovered from the house of the accused, house of

the accused was locked and the accused came on the scene thereafter;

v) The pickaxe and spade was recovered at the instance of the accused and it

allegedly used for digging possibly for destroying the evidence of the offence;

vi) the spot panchnama proves recovery of blood stained axe from the spot i.e. from the house of the accused, the blood on the axe is of `B' group

12. Though the prosecution has not established because the witnesses were hostile that the blood stains on the clothes of the accused were that of the victim, the prosecution has established the above circumstances which in our opinion, complete the entire chain of circumstances to prove that the death of the victim was caused by nobody else but the accused as was found by the learned trial Judge. We have considered the judgment of the learned trial Judge. He has properly appreciated the evidence on record while coming to the conclusion of guilt. We accept all the findings recorded by the learned trial Judge for the reasons mentioned above. In our opinion, no additional reasons

need be given for confirmation of those findings as appreciation of the evidence by the learned trial Judge is found on reappreciation thereof by us to be proper. In our opinion, the appeal is without any substance and deserves to be dismissed. It is accordingly dismissed. Bail bond of the appellant-accused stands canceled.